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## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

The 13th April 2011

No. 3725—li/1(B)-127/1998 (P)-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 19th October 2010 in Industrial Dispute Case No. 183/2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s Naresh Kumar Coal Sales Ltd., Calcutta and its workman Shri Sree Ram, C/o General Secretary, Cuttack Commercial Workers Union, Gosala Road, Nuabazar, Cuttack was referred to for adjudication is hereby published as in the Schedule below :

### SCHEDULE

INDUSTRIAL TRIBUNAL, BHUBANESWAR  
INDUSTRIAL DISPUTE CASE No. 183 OF 2008  
(Previously registered as I.D. Case No. 12 of 1999 in  
the file of the P.O., Labour Court, Bhubaneswar)  
Dated the 19th October 2010

Present :

Shri Raghubir Dash, O.S.J.S. (Sr. Branch),  
Presiding Officer,  
Industrial Tribunal,  
Bhubaneswar.

Between :

The Management of M/s Naresh Kumar  
Coal Sales Ltd.,  
14-B, Camel Street, Calcutta-700017.

.. First-Party—Management

And

Its Workman  
Shri Sree Ram,  
C/o General Secretary,  
Cuttack Commercial Workers' Union,  
Gosala Road, Nuabazar,  
Cuttack.

.. Second-Party—Workman

## Appearances :

Shri N. K. Mishra,  
Advocate

. . For the First-Party—Management

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Shri T. Lenka,  
Authorised representative

. . For the Second-Party—Workman

## A W A R D

This is a reference under Section 10 of the Industrial Disputes Act, 1947 (for short the 'Act') made by the Government of Orissa in the Labour & Employment Department vide their Order No. 1132—li/1(E)-127/1998-LE., dated the 28th January 1999 which was originally referred to the Presiding Officer, Labour Court, Bhubaneswar for adjudication but subsequently transferred to this Tribunal for adjudication vide Labour & Employment Department's Order No.4138—li/21-32-2007-LE., dated the 4th April 2008. The schedule of reference runs as follows :

“Whether the termination of services of Shri Sree Ram by the management of M/s Naresh Kumar Coal Sales Ltd., with effect from the 30th August 1997 is legal and/or justified ? If not, to what relief Shri Sree Ram is entitled ?”

2. There is no dispute between the parties that the second party had been working as a Watchmen under the first party since 1984, that initially he was posted at Dehradun and continued as such till October 1996 that vide letter, Dt.14-10-1996 he was transferred from Dehradun to Cuttack to work under the Regional Manager of the first party's Branch Office at Cuttack, that he was engaged in the first party's depot situated at Manguli near Cuttack and that, on the ground that the depot was going to be closed and no job was available with the first party at its Cuttack Office, on 30-8-1997 the second party was served with a notice of termination of his service.

According to the workman, he was denied employment with effect from the date of the notice of termination, i.e. 30-8-1997. Though it was styled as one month's notice but no payment was offered to the workman. Even his salary for the month of August 1997 was not paid to him. Though the first party has different branches throughout the country and though his service was transferrable in nature, he was not transferred to any other branches. There was no valid termination inasmuch as the provisions of the Act were not complied with. It is further contended that the Regional Manager of the first party's Branch at Cuttack has no authority to terminate his services.

3. The first party takes the stand that since its Coal Depot at Manguli was closed down and no job was available to any of the employees engaged in that depot all of them were terminated. One month's notice was served on the workman on Dt. 30-8-1997 and his services were due to be terminated with effect from Dt. 30-9-1997. But after the service of the notice the workman did not attend either at the depot or at the Branch Office at Cuttack for full and final settlement of his accounts nor did he report for duties. Thus, there was no termination of his service with effect from Dt. 30-8-1997.

4. To answer the reference, the following issues have been settled :—

### ISSUES

1. “Whether the termination of services of Shri Sree Ram by the management of M/s Naresh Kumar Coal Sales Ltd., with effect from Dt. 30-8-1997 is legal and/or justified ?
2. If not, to what relief Shri Sree Ram is entitled ?”

5. One witness has been examined on either side. W.W. No 1 is the workman himself and M.W. No.1 is the authorised representative of the first party. Few documents have been exhibited from both sides.

### FINDINGS

6. *Issue No.1*—Ext.4 is the notice, Dt. 30-8-1997 served on the second party to inform him that his services were no longer required by the first party and treating it as one month’s notice the second party should collect his dues immediately and settle his accounts. According to the first party, Ext.4 being the one month’s notice the services of the second party were going to be terminated with effect from Dt. 30-9-1997 but according to the second party, he was denied employment on and from 30-8-1997. According to the management, the second party did not turn-up after service of the said notice, either to attend duties or to receive his dues. It is argued that it was the second party who absented from duties with effect from the Dt.1-9-1997 but this plea does not appear to be convincing. Ext.B is a representation of the second party made just three days after the service of the notice (Ext.4) wherein he has stated that on 30-8-1997 the Branch Manager, Cuttack told him that there was no work for him and he should receive his dues within one month. Ext.5 (which is marked without any objection raised by the management) is another representation of the workman made on Dt. 4-9-1997 wherein he has mentioned that his services were terminated with effect from the Dt.1-9-1997 which, to him, was a bolt from the blue and his retention in service should be considered favourably. Ext.A is another representation of the workman made on Dt. 6-10-1997 wherein he has stated that after communication of the notice of termination he was not allowed to perform his duties even during the notice period and instead he was directed to leave the premises at Manguli. It is also stated therein that he was not paid one month’s notice pay and compensation amount with other terminal benefits including his salary for the month of August 1997. Thus, it is found that soon after the service of the notice the workman has made repeated representations stating therein that he was not allowed to work with effect from the Dt.1-9-1997. He also made complaint that notice pay and retrenchment benefits were not paid to him. On the part of the first party there was no correspondence to the effect that the allegations made by the workman were false. There is also no proof that the management offered to the workman the amount due towards retrenchment benefits or the amount was sent to him by way of Money Order or any other mode. Though the workman has pleaded that his salary for the month of August 1997 was not paid to him, the management has not adduced evidence to disprove that plea. Taking all these facts and circumstances into consideration this Tribunal arrives at a conclusion that with effect from the Dt.30-8-1997 the services of the second party were terminated by the first party without proper compliance of the provisions contained in Section 25-F of the Act. Consequently, the termination of service of the second party is illegal.

7. Admittedly, the first party has got different branches at different places through out the country. It is also found that the service of the second party was transferrable in nature. He is a man of Uttar Pradesh. He worked at Dehradun for a long period of twelve years and thereafter he was transferred to Cuttack in the month of October 1996. About less than one year thereafter he was served with the notice of termination of his service. It is not pleaded nor proved by the first party that before taking a decision to terminate the services of the workman it had examined whether the workman should have been accommodated at any other branches of the first party. It is also not shown by the first party that the workman was the junior most employee of the category which he belonged to and for that reason his turn came first to be retrenched on account of non-availability of work. Therefore, the provisions contained in Section 25-G of the Act are also not shown to have been complied with. For that reason also the termination is illegal and improper.

8. *Issue No. 2*—The workman claims to be reinstated with full back wages and other service benefits. It is found that the workman had served with the first party for about thirteen years. He had held a permanent post. But, for the whimsical and arbitrary action of the first party he could have been adjusted somewhere else. From his deposition it appears that the workman was 38 years old at the time the illegal termination was effected. He had been working as a Watchman. There is no pleading nor any proof that the workman was not gainfully employed during the relevant period. It appears, being a man of Uttar Pradesh, he was been staying in Orissa ever since his transfer from Dehradun till date. Under such circumstances, there may be a presumption that he has been earning his livelihood by serving at some other places. But, there is likelihood that he is unable to earn as much as he could have earned if he had been in his job with the first party. Taking all these facts and circumstances into consideration, this Tribunal is of the considered view that the workman is entitled to reinstatement in service with 50% of back wages and other service benefits.

The reference is answered accordingly.

Dictated and corrected by me.

RAGHUBIR DASH  
19-10-2010  
Presiding Officer  
Industrial Tribunal  
Bhubaneswar

RAGHUBIR DASH  
19-10-2010  
Presiding Officer  
Industrial Tribunal  
Bhubaneswar

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By order of the Governor

P. K. PANDA  
Under-Secretary to Government